

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

PINNACLE ADVISORS, LLC, *et al.*

Defendants.

Case No.: 5:23-cv-00547-FJS-ATB

**NOTICE OF MOTION TO DISMISS  
PURSUANT TO RULE 12(b)(6) OF THE  
FEDERAL RULES OF CIVIL  
PROCEDURE**

ORAL ARGUMENT REQUESTED

PLEASE TAKE NOTICE that upon the enclosed Memorandum of Law, with Exhibits “1” through “4” attached thereto; and upon all prior pleadings filed herein, the undersigned, on behalf of Defendants Mark E. Wadach and Lawton A. Williamson (hereinafter collectively referred to as “Independent Trustees”), respectfully moves this Court before the Hon. Frederick J. Scullin, Jr., U.S.D.J., on a date and time to be scheduled upon filing by the Clerk of Court, or as soon thereafter as counsel may be heard, at the United States District Court, Northern District of New York, James M. Hanley Federal Building, 100 S. Clinton Street, Syracuse, New York for an Order: (a) dismissing the Complaint with prejudice as against the Independent Trustees pursuant to Federal Rule of Civil Procedure 12(b)(6); and (b) for such other and further relief in favor of the Independent Trustees as the Court deems appropriate.

PLEASE TAKE FURTHER NOTICE that pursuant to Local Rule 7.1(b)(5), the Independent Trustees request oral argument because: (1) the Complaint is the first enforcement action brought by Plaintiff, Securities and Exchange Commission (“SEC”), alleging violations of the SEC’s Liquidity Rule that was recently promulgated pursuant to the Investment Company Act of 1940; (2) the Complaint alleges a novel theory of aiding and abetting liability against the Independent Trustees of a publicly traded mutual fund that lacks clear precedent and that would

have enormous implications for the securities industry; and (3) the Independent Trustees are challenging the Complaint on multiple grounds involving important issues of statutory interpretation, administrative rulemaking, and separation of powers issues. Attorney Jan M. Folena, admitted *pro hac vice*, plans to argue the motion.

Dated: July 11, 2023

Respectfully submitted,

STRADLEY RONON STEVENS & YOUNG, LLP

*s/ Jan M. Folena*

---

Jan M. Folena, Esq. (*Admitted Pro Hac Vice*)  
2000 K Street, N.W., Suite 700  
Washington, DC 20006-1871  
T: (215) 564-8092  
F: (215) 564-8120  
jfolena@stradley.com

Eric B. Porter, Esq. (NYND No. 303261)  
100 Park Avenue, Suite 2000  
New York, New York 10017  
T: (212) 404-0639  
F: (646) 682-7180  
eport@stradley.com

*Counsel for Defendants, Mark E. Wadach and  
Lawton A. Williamson*

To: Todd D. Brody, Esq.  
Securities and Exchange Commission  
New York Regional Office  
100 Pearl Street, Suite 20-100  
New York, NY 10004-2616  
BrodyT@sec.gov

**CERTIFICATE OF SERVICE**

I hereby certify that on July 11, 2023, I electronically filed the foregoing Notice of Motion to Dismiss Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Memorandum of Law with accompanying documents with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following:

Todd D. Brody, Esq.  
Securities and Exchange Commission  
New York Regional Office  
100 Pearl Street, Suite 20-100  
New York, NY 10004-2616  
[BrodyT@sec.gov](mailto:BrodyT@sec.gov)

Brian J. Butler, Esq.  
Suzanne Galbato, Esq.  
BOND, SCHOENECK & KING, PLLC  
One Lincoln Center  
Syracuse, New York 13202-1355  
Telephone: (315) 218-8000  
[bbutler@bsk.com](mailto:bbutler@bsk.com)  
[sgalbato@bsk.com](mailto:sgalbato@bsk.com)  
*Attorneys for Defendants,*  
*Pinnacle Advisors, LLC, Robert F. Cuculich*  
*and Benjamin R. Quilty*

*s/ Jan M. Folena*  
\_\_\_\_\_  
Jan M. Folena

Date: July 11, 2023